

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

RANGE REGIONAL HEALTH SERVICES¹

Employer

and

MINNESOTA COUNCIL 65, AMERICAN FEDERATION
OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES,
AFL-CIO

Union/Petitioner

Case 18-UC-399

DECISION AND ORDER

The Union/Petitioner (Petitioner) seeks to clarify the existing bargaining unit to include the following positions: Materials Management Clerk, Stockroom Attendant, Hemodialysis Assistant, Student Learner, Medical Transcriptionist, Evening Clerk, Respiratory Care Assistant, CT Assistant, Adult Day Services Assistant, Discharge Analysis Clerk, Operations Assistant, and MRI PET Coordinator. The Employer contends that these positions should not be accreted to the existing bargaining unit because they have been historically excluded from the bargaining unit. With respect to the first positions—Materials Management Clerk, Stockroom Attendant, Hemodialysis Assistant, Student Learner, Medical Transcriptionist, Evening Clerk, Respiratory Care Assistant, and Discharge Analysis Clerk positions—I conclude that these employees have been historically excluded from the bargaining unit. While the CT Assistant, Adult Day Services Assistant, and MRI PET Coordinator positions have not been historically excluded from the bargaining unit, I conclude that the unit should not be clarified to include these positions because

¹ The Employer's name appears as amended at the hearing.

there are numerous other non-professional positions that are not included in the bargaining unit. Finally, the Union did not introduce any evidence regarding the Operations Assistant position.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's ruling are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

BACKGROUND

The Employer is a non-profit corporation that is engaged in the operation of an acute care hospital. The Employer and Petitioner have been parties to successive collective-bargaining agreements dating back to 1957. The most recent collective-bargaining agreement was effective from July 1, 2000 to June 30, 2003. Negotiations for a replacement collective-bargaining agreement are ongoing. According to the recognition clause in the most recent agreement, the

² The Employer, Range Regional Health Services, is a Minnesota corporation with an office and place of business in Hibbing, Minnesota, where it is engaged in the operation of an acute care hospital. During the past 12 months, a representative period, the Employer purchased and received in excess of \$50,000 worth of materials or services directly from suppliers located outside the state of Minnesota and earned in excess of \$1 Million dollars in gross revenue.

Employer recognizes Petitioner as the exclusive bargaining representative of its full-time, part-time, casual and on-call non-professional employees.

STATEMENT OF THE LAW

In recognition of its statutory duty to protect employees' right to choose their bargaining representative, the Board follows a restrictive policy in accreting positions to an established bargaining unit. United Parcel Service, 303 NLRB 326, 327 (1991). One aspect of this restrictive policy is that unit clarification petitions may not be used to add historically excluded positions to a bargaining unit unless those positions have undergone recent substantial changes in duties and responsibilities. Bethlehem Steel Corp., 329 NLRB 243 (1999). As the Board explained:

Unit clarification may be appropriate where an employee classification has been newly created or has undergone recent substantial changes so as to create doubt regarding whether that classification should be accreted to an existing unit. But, unit clarification may not be used to add to a unit an employee classification which historically has been excluded from the unit.

Robert Wood Johnson University Hospital, 328 NLRB 912, 914 (1999) citing Union Electric Co., 217 NLRB 666 (1975). Thus, parties must address the creation of a new position prior to the execution of a successor collective-bargaining agreement or bear the risk of "any instability resulting from the existence of a group of employees having interests in common with unit employees but excluded from representation in the unit." United Postal Service, 303 NLRB 326, 327 (1991).

ANALYSIS

An application of the historical exclusion rule to the facts of this case establishes that with the exception of the CT Assistant, Adult Day Services Assistant, Discharge Analysis Clerk, and the Operations Assistant positions, the positions Petitioner seeks to add to the existing unit

have been historically excluded from the unit. Contrary to the Union's contention, the record reveals that the Student Learner position has existed as a paid position since at least 1971. Twelve collective-bargaining agreements have been executed since 1971. The evidence submitted also reveals that the Medical Transcriptionist and Discharge Analysis Clerk positions have been in existence since at least 1982. Since that time nine collective-bargaining agreements have been executed. The position of Evening Clerk has existed since at least 1983.³ The Stockroom Attendant,⁴ Hemodialysis Assistant,⁵ and Respiratory Care Assistant positions were established on March 1, 1989. Six collective-bargaining agreements have been executed since March 1, 1989. The most recently created position, the Materials Management Clerk position, was created on May 6, 1998. The parties have executed two collective-bargaining agreements since the Materials Management Clerk position was created.

Petitioner raises three arguments to support its position that the historical exclusion limitation on accretion does not apply here: (1) it reserved its right to file a unit clarification petition during negotiations for the July 1, 2000 to June 30, 2003 contract; (2) the Employer failed to properly notify the Petitioner of newly created non-professional classifications or of significant revisions; and (3) the Employer has recently substantially changed the work duties and responsibilities of some of these positions. I find Petitioner's arguments unpersuasive.

First, Petitioner's reservation of its right to file a unit clarification petition does not preclude a finding that the positions Petitioner wishes to clarify have been historically excluded from the unit. The parties stipulated that during negotiations for the most recent collective-

³ The title of the position changed in sometime between 1983 and 1985 from Evening File Clerk to Evening Clerk.

⁴ The name of the position was changed in 1996 from Stockroom Clerk to Stockroom Attendant.

⁵ The title of the position changed in 1996 from Hemodialysis Helper to Hemodialysis Assistant.

bargaining agreement in February 2001, the union proposed to add 30 positions to the collective bargaining agreement, but the Employer refused to negotiate about the subject. The parties further stipulated that during this bargaining session Petitioner reserved its right to file a unit clarification petition and the Employer reserved its right to challenge the unit clarification petition. Evidence that the Union attempted to add certain positions to the bargaining unit does not change the fact that these positions have been historically excluded. As the Board explained, the historical exclusion limitation on accretion

require[s] neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristics distinct from unit employees. It is the fact of historical exclusion that is determinative.

UPS, 303 NLRB at 327. The determinative fact here is that the collective-bargaining agreement that resulted from the February 2001 negotiations does not cover any of the positions Petitioner is seeking to clarify. Robert Wood Johnson University Hospital, 328 NLRB at 916 fn.6.

Petitioner next argues that the Employer failed to properly notify Petitioner of newly created positions and therefore the historical exclusion rule is inapplicable. However, I have found no case law, nor has Petitioner provided any, stating that the historical exclusion rule is inapplicable if an employer fails to give a union formal notice that it has created or changed a non-bargaining unit position. In any event, it is clear that Petitioner's officers have worked alongside employees in the disputed classifications for years; that vacancies in the disputed classifications have been posted near human resources and that this area is a public area where anyone can view the postings; and that Petitioner's officers were aware of the existence of most (if not all) of the disputed classifications prior to the February 2001 negotiations.

Turning to Petitioner's third argument, I find that the Petitioner has introduced no evidence that the positions it seeks to clarify have undergone any recent substantial changes in

duties and responsibilities. Petitioner argues that the Employer has made various changes to these positions since the positions were first created. To support its argument, Petition relies largely on the position descriptions submitted by the Employer. Even assuming the changes Petitioner points to have substantially altered the positions, Petitioner has not established that these changes are recent. The most recent job descriptions for the various positions have effective dates between 1989 and 1998. Petitioner has introduced no evidence that the changes it points to were made after these effective dates. For example with respect to the Hemodialysis Assistant position, Petitioner pointed out some differences between the March 1, 1989 position description and the April 15, 1996 position description. Petitioner also pointed out several changes that have been made to the Medical Transcriptionist position, the most recent of which were effective April 26, 1995. Finally, regarding the Respiratory Care Assistant position, Petitioner pointed out differences between the March 1, 1989 position description and the October 10, 1994 job description. Even assuming the differences the Petitioner pointed out substantially altered the duties and responsibilities of the respective positions, these changes are not recent. In fact, the changes to the job descriptions were made eight to ten years before Petitioner filed this petition and several collective bargaining agreements have been executed in the interim. Accordingly, I conclude that the Materials Management Clerk, Stockroom Attendant, Hemodialysis Assistant, Student Learner, Medical Transcriptionist, Evening Clerk, Respiratory Care Assistant, and Discharge Analysis Clerk employees have been historically excluded from the bargaining unit. Thus, clarification of the unit to include these positions is not warranted.

The Unit clarification petition is also inappropriate for the remaining four positions. The evidence submitted at hearing shows that the Adult Day Services, CT Assistant and MRI PET

Coordinator positions were established during the term of the most recent collective-bargaining agreement⁶. While, the employees in these positions have not been historically excluded from the bargaining unit, I conclude the unit should not be clarified to include the Adult Day Services, CT Assistant, and MRI PET Coordinator employees because there are numerous non-professional employees that are not part of the bargaining unit. The Board has consistently refused to permit accretion on a piecemeal basis where the employees sought to be included in the bargaining unit have a community of interest with other employees not in the unit. United Parcel Service, 325 NLRB 37 (1997). Here, numerous non-professional employees are not included in the bargaining unit. Stable and efficient labor relations would not be promoted by adding some non-professional employees to the bargaining unit while others are excluded.⁷ Id. These policies would best be effectuated by a self-determination election. I therefore, deny the request to clarify the Adult Day Services, CT Assistant, and MRI PET positions on a piecemeal basis.

Finally, Petitioner offered no evidence regarding the Operations Assistant position and the Employer offered evidence indicating that this position does not exist. Thus, I deny Petitioner's request to clarify the Operations Assistant position.

CONCLUSION

For the above reasons I find that no valid issues have been raised concerning the unit placement of the Materials Management Clerk, Stockroom Attendant, Hemodialysis Assistant,

⁶ The Adult Day Services Assistant employees became employees of the Employer in October 2001. The only evidence submitted about the MRI PET Coordinator position is a job description with an effective date of July 18, 2002. The only evidence submitted about the CT Assistant position is a job description with an effective date of February 11, 2003.

⁷ There is an additional basis for my decision to deny the request to clarify the CT Assistant and MRI PET Coordinator positions. Petitioner failed to submit any evidence about the CT Assistant and MRI PET positions or their relationship to bargaining unit positions. Thus, there are no facts in the record for which I could conclude that the CT Assistant and MRI PET positions should be included within the established bargaining unit.

Student Learner, medical Transcriptionist, Evening Clerk, Respiratory Care Assistant, CT Assistant, Adult Day Services Assistant, Discharge Analysis Clerk, Operations Assistant, and MRI PET Coordinator employees that are appropriate for resolution in a unit clarification proceeding. Accordingly, the petition should be dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED that the Petition is dismissed.⁸

Signed at Minneapolis, Minnesota, this 11th day of May 2004.

/s/ Ronald M. Sharp

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⁸ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 –14th Street, N.W. Washington, D.C. 20570. This request must be received by the Board in Washington by **May 25, 2004**.